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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,013	02/13/2002	James J. Fallon	8011-16	7350
1473	7590	11/15/2006	EXAMINER BOCURE, TESFALDET	
FISH & NEAVE IP GROUP ROPES & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105			ART UNIT 2611	PAPER NUMBER

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/076,013	FALLON ET AL.	
	Examiner Tesfaldet Bocure	Art Unit 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 August 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9, 11 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 9, 11 and 16-18 is/are rejected.
- 7) Claim(s) 2-8 and 13-15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/29/06, 9/8/06 &amp; 9/16/06</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's arguments with respect to claims 1-8,9,11 and 13-18 have been considered but are moot in view of the new ground(s) of rejection.

***Information Disclosure Statement***

2. Information Disclosure Statements (IDSs) received on 8/29/06, the Examiner has considered 9/8/06 and 9/16/06 and the initialed copies (13 pages) of the IDSs are attached with this correspondence.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,9,11,16,17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rynderman et al., Rynderman hereinafter (US patent number 5,563,961, newly cited).

Rynderman teaches a compression method which optimizes the compression rate according to the desired throughput comprising:

Compressing the received data to be stored in a storage device; and measures (claimed tracking the throughput) the average time needed to store the compressed data in the storage device and optimizes (claimed compressing second rate if the first rate does not meet the predetermined threshold) the compression rate in response to the measured average storage time and optimal bandwidth (claimed predetermined throughput) as in claims 1,9,11,16,17 and 18. The compression method of Rynderman monitors (claimed plurality of compression routines in claim 11) the amount of buffer's capacity (bandwidth) and adjusts the compression rate and flow rate so that the buffer is never full or empty. See figure 1 and accompanying test.

#### ***Allowable Subject Matter***

5. Claims 2-8, and 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tesfaldet Bocure whose telephone number is (571) 272-3015. The examiner can normally be reached on Mon-Thur (7:30a-5:00p) & Mon.-Fri (7:30a-5:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jayanti (Jay) Patel can be reached on (571) 272-2988. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

T.Bocure

Tesfaldet Bocure  
Primary Examiner  
Art Unit 2611

